

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
Consumers Energy Company for)	Case No. U-15704-R
Reconciliation of Gas Cost Recovery)	
Costs and Revenues for the 12-month)	
Period April 2009 – March 2010 and)	
Reconciliation of Pension and OPEB)	
Cost Previously Authorized for Recovery))	
_____)	

NOTICE OF PROPOSAL FOR DECISION

The attached Proposal for Decision is being issued and served on all parties of record in the above matter on November 23, 2011.

Exceptions, if any, must be filed with the Michigan Public Service Commission, P.O. Box 30221, 6545 Mercantile Way, Lansing, Michigan 48909, and served on all other parties of record on or before December 22, 2011, or within such further period as may be authorized for filing exceptions. If exceptions are filed, replies thereto may be filed on or before January 20, 2012. **The Commission has selected this case for participation in its Paperless Electronic Filings Program. No paper documents will be required to be filed in this case.**

At the expiration of the period for filing exceptions, an Order of the Commission will be issued in conformity with the attached Proposal for Decision and will become effective unless exceptions are filed seasonably or unless the Proposal for Decision is reviewed by

action of the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

November 23, 2011
Lansing, Michigan

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On June 30, 2010, Consumers Energy Company (Consumers, CEC or Company) filed its application requesting that the Michigan Public Service Commission (Commission) approve its reconciliation of Gas Cost Recovery (GCR) costs and revenues for the period April 2009 through March 2010 (GCR year) and approve its reconciliation of 2006 and 2007 pension and other post employment benefit (OPEB) costs that the Commission approved for recovery in Case No. U-15041-R. On August 26, 2010, a pre-hearing conference was held before Administrative Law Judge, Mark D. Eyster. Counsel appeared on behalf of Consumers, the Michigan Public Service Commission staff (Staff), the Attorney General for the State of Michigan (Attorney General), the Residential Ratepayer Consortium (RRC), and the Michigan Community Action

Agency Association (MCAAA). At the pre-hearing conference, a schedule was adopted and intervenor status was granted to the Attorney General, RRC, and MCAAA. An evidentiary hearing was conducted on March 15, 2011, at which, the pre-filed testimony of the witnesses was bound into the record, exhibits were admitted into evidence, and cross-examination was conducted. Consumers, the Attorney General, MCAAA, and RRC filed briefs on April 21, 2011, and reply briefs on May 12, 2011. The record consists of testimony contained in the 367 page transcript and 45 exhibits.

FINDINGS OF FACT

Introduction

Consumers presented the testimony of Erin A. Rolling, Senior Rate Analyst I in the Rates and Business Support Department; Michael A. McKimmy, a Principal Engineer in the Gas Control and System Planning Section of Gas Management Services in the Energy Supply Department; Amy Pittelkow, Senior Accounting Analyst in the Gas Fuel and Reconciliation Accounting Section of the General Accounting Department, and; David W. Howard, Director of Gas Supply.

Ms. Rolling's testimony addressed Consumers' proposed refund plan for the over-recovery of funds during the GCR year and recommendations related to the reconciliation of pension and other post-employment benefits (OPEB). She sponsored exhibit A-22. Mr. McKimmy provided direct testimony to address operational decisions made during the GCR year and rebuttal testimony in response to RRC's witness, Frank Hollewa. He sponsored exhibits A-10 through

A-16. Ms. Pittlekow provided testimony to address accounting for Consumers' GCR year, to establish the amount of the GCR under-recovery, to identify the net amount included in Consumer's liability account, and to address pension and OPEB reconciliation. Ms. Pittlekow sponsored exhibits A-17 through A-21. Mr. Howard provided direct testimony to demonstrate that Consumers' GCR expenditures were incurred in a reasonable and prudent manner and in accordance with the approved GCR plan. Additionally, he provided rebuttal testimony in response to the Attorney General's witness, Ralph Miller, RRC's witness, Frank Hollewa, and MCAAA's witness, William Peloquin. Mr. Howard sponsored exhibits A-1 through A-9.

The Attorney General presented the testimony of Ralph E. Miller, an independent economic consultant. Mr. Miller provided testimony addressing Consumers' fixed price purchases. Mr. Miler sponsored exhibits AG-1 through AG-4.

RRC presented the testimony of Frank J. Hollewa, an independent energy consultant, d/b/a EPEC. Mr. Hollewa's testimony addressed his independent analysis of Consumer's filing. Mr. Hollewa sponsored exhibits RRC-1 through RRC-4.

MCAAA presented the testimony of William A. Peloquin. Mr. Peloquin provided testimony regarding "cost minimization and dealings with subsidiaries and affiliates." 2 Tr 21. Mr. Peloquin sponsored exhibit MCAAA-1.

Under-Recovery Calculation

For the GCR year, Consumers calculates a \$1,423,236 refund due its customers. 2 Tr 37. The refund represents the combination of a GCR under-recovery of \$53,465 and \$1,476,701 of interest on the over/under-recovery balance that recorded an over-recovery for the majority of the GCR year.¹ 2 Tr 39. Pursuant to the procedures found in Rule C.7.2 of its tariff, Consumers proposes to roll-in the refund to its next plan year. 2 Tr 37. While the intervenors recommend disallowance of certain costs, the calculation of this figure and the roll-in procedure are not challenged by any of the parties. Absent any adjustments, it is found that Consumers incurred an under-recovery of \$53,465. However, with the inclusion of interest, \$1,423,236 is due customers.

Disputed August and September, 2008, Purchases

Exhibit A-7 summarizes the gas purchases that cover the GCR year and shows purchases that were included in the Plan case. 2 Tr 111. Exh A-7. Included in the exhibit are an 8/22/08 purchase of 5,000 Dth/day from Supplier C, an 8/28/08 purchase of 5,000 Dth/day from Supplier C, and two separate purchases on 9/5/08 of 5,000 Dth/day from Supplier B. The Attorney General and RRC challenge the reasonableness and prudence of these four purchases.

Mr. Miller testified that he believed these purchases were “neither necessary nor appropriate under Consumers’ Gas Purchasing Strategy Guidelines.” 2 Tr 333. Instead, he believes Consumers should “have waited to see whether the additional [fixed price (FP)] commitments needed as of August

¹ For an explanation of the procedures used to calculate over/under- recoveries, see 2 Tr 86-92.

2008 to reach the December 1, 2008 milestone could be made under the Quartile FP Triggers Guideline". 2 Tr 341. Mr. Miller adds, at 2 Tr 342, that:

[He does] not claim that Consumers should or could have known in late August and early September that Quartile FPPs would be triggered in time to meet the December 1, 2008 Tiered FPP milestone. But it is clearly impossible for Consumers to have known that the opportunities for Quartile FP Triggers would not appear in time to achieve the Tiered FPP milestone, and there is no good reason for Consumers to have believed it unlikely that such opportunities would appear. Consumers should therefore have waited to see whether trigger opportunities would appear.

Mr. Miller recommends a \$6.1 million disallowance. 2 Tr 332.

Mr. Hollewa contests the same four purchases and states that Consumers has failed to use discretion, as required by the Guidelines. He adds, at 2 Tr 270-71:

The 8/22/08 purchase was approximately \$0.60 higher than the start of the Third Quartile (\$642,000). The 8/28/08 purchase was approximately \$0.55 higher than the start of the Third Quartile (\$588,000). The 9/5/08 purchases were approximately \$0.21 higher than the start of the Third Quartile (\$383,000). Therefore, I am recommending a disallowance of \$1,613,000 relating to these four purchases

. . . This is because the 2009-2010 annual strip averages ranged from \$12.278 on 7/03/08 to \$9.747 on the last trading day for July (a price decrease of \$2.531); from \$10.086 on 8/01/08 to \$9.343 on the last trading day for August (a price decrease of \$0.743); and from \$9.447 on 8/27/08 to \$8.526 on 9/11/08 when prices reached the Second Quartile (a price decrease of \$0.921). I can think of no good reason why the Company would feel it was necessary to buy "Tiered" purchases instead of waiting to at least the Second Quartile, especially since prices were falling so drastically in the two prior months. The Company may claim that such a conclusion is "impermissible hindsight", but a price drop of \$3.169 from \$12.278 on 7/03/08 to \$9.109 on 8/22/08 spanning 36 trading days can easily be characterized as "free-fall". Waiting for the possible price drop to \$8.55 to make purchases in the Second Quartile would not only have been prudent, but would have shown common sense with recognition of a falling market under the circumstances that existed at that time.

In rebuttal, Consumers' witness, Mr. Howard, expressed his opinion that the "guidelines were followed in regards to [the] Fixed Price Purchases" that the intervenors challenge. To explain Consumers' purchasing decision, Mr. Howard adds, at 2 Tr 118-19, that :

Exhibit A-5 page 1 line 8 in my GCR plan case testimony shows that the annual requirements of the 2009-2010 GCR period as of December 2008 were 221Bcf.

* * *

In order to meet the Tiered FPP requirement of 15-20% of the 221 Bcf by December 1, 2008, Consumers needed to have approximately 39 Bcf (17.5% of 221 Bcf) under fixed price purchases by December 1, 2008. Exhibit A-5 (DWH-5) page 3 shows that in August of 2007 the Quartile FPP requirements triggered for approximately 23 Bcf. That left approximately 16 Bcf of FPP that were required to be purchased by December 1, 2008. Quartile purchases had not yet triggered in late August 2008. Consumers initiated purchases to buy the remaining 16 Bcf evenly over the August through November 2008 time period. Consumers purchased an additional 4.0 Bcf in August and early September 2008 towards the remaining 16 Bcf Tiered FPP requirement, while planning to buy approximately 4.0 Bcf per month for the remaining months of September, October and November of 2008. As can be seen on Exhibit A-5 (DWH-5) page 4, the last Tiered FPP occurred on September 5, 2008 as on September 11, 2008 the Quartile FPP triggered and the remaining Tiered FPP requirements were met through Quartile purchases.

In addition, Mr. Howard testified to the facts that the "challenged purchases were made in August and September 2008 for delivery during the [GCR] year", that the "GCR Plan case U-15704 was filed in December 2008", and that [e]ach of the challenged purchases is identified in Case No. U-15704 Exhibit A-23, page 1." 2 Tr 119. All of these purchases were approved by Commission order on March 2, 2010.

Basis Points

At 2 Tr 196-201, Consumers' witness, Mr. Howard, explains the NYMEX price and the basis price of the gas it purchases. His testimony established the following. When Consumers makes its fixed price purchases, the price it pays contains two components; the NYMEX price that attaches to the natural gas and a basis price that is an adjustment reflecting the gas' delivery point. When Consumers solicits offers from suppliers, it has "kind of a feel or a range of where [it] think[s] NYMEX prices should be and where basis should be". However, not until Consumers accepts an offer does it learn the separate NYMEX and basis prices that together make the price Consumers pays for that gas. In the past, Consumers has separately solicited and accepted offers for the basis price and for gas at NYMEX prices. This purchasing strategy remains an option and can result in a firm supply at a fixed price. However, during the GCR year, Consumers did not request offers for a separate basis price, because, as Mr. Howard opines, Consumers' "requirement under the approved guidelines is to purchase fixed price natural gas, not basis."²

RRC challenges a number of purchases, based on the basis price.

Disputed December, 2008, Great Lakes Purchase

The basis on Consumers 12/17/08 purchase of 2,140,000 Dth for April-October from Supplier B was (\$0.0900) at the Emerson delivery point. 2 Tr 128-29. "[I]n a period from November to December 2008", "the Emerson basis was offered in a range of (\$0.0800) to (\$0.2600)." 2 Tr 129. "[T]he Basis

² Mr. Howard's opinion regarding the requirements of the Guidelines is not accepted as fact, but is accepted as Consumers' reasoning for not seeking basis only offers.

for the four Apr-Oct purchases made on 11/07/08, 11/12/08, 11/18/08 and 11/20/08 averaged (\$0.1800) and two purchases made on 11/25/08 averaged (\$0.1600).” 2 Tr 273. See Exh A-5. From the record, it is unclear what the delivery point was for the six November purchases.

Based on the difference between the price of the 12/17/08 purchase and the average of the 11/25/08 purchases, RRC calculates a disallowance of \$149,800.³

All of these purchases were presented in Exhibit A-23 of the Plan case, Case No U-15704, and approved by Commission order on March 2, 2010.

Disputed October, 2008, Trunkline Purchases

Exhibit A-25, page 4 of 11, presents a number of October 2008 purchases of gas for delivery on Trunkline. As established by RRC’s witness, Mr. Hollewa, “[t]he average Basis for the 9/29/08 purchase from Supplier J and the 10/06/08 purchase from Supplier H was (\$0.0275) for the Apr-Oct period and (\$0.0200) for the Nov-Mar period. The average Basis for all other purchases was (\$0.0725) for eight Apr-Oct purchases and (\$0.0612) for four Nov-Mar purchases.” 2 Tr 273. See Exh A-25.

Based on the difference between the combined average price of the 9/29/08 and 10/06/08 purchases and the average of all the other purchases, RRC calculates a disallowance of \$313,400.⁴

All of these purchases were presented in Exhibit A-23 of the Plan case, Case No. U-15704, and approved by Commission order on March 2, 2010.

³ $(\$0.1600 - \$0.0900) \times 2,140,000 = \$149,000$

⁴ $(4,280,000 \times \$0.0450) + (3,020,000 \times \$0.0400) = \$313,400$

The NYMEX “High” Disallowances

At 2 Tr 174-77, Mr. Hollewa establishes that Consumers made 17 gas purchases where the “NYMEX bid accepted by [Consumers] was greater than the NYMEX ‘High’ for that day as reported by Gas Daily”. 2 Tr 275. Mr. Hollewa provides a table of these purchases at 2 Tr 276. The difference between the price paid and the cost of that gas, if priced at Gas Daily’s daily high, is \$1,994,812. 2 Tr 276. Mr. Hollewa recommends this amount be disallowed. 2 Tr 277.

However, Gas Daily’s report “reflects day trading data from the NYMEX Natural Gas pit trades, which include only a portion of NYMEX trading activity during the day. A larger portion of natural gas futures trades are executed using the Globex electronic trading platform within the Exchange and even much larger over-the-counter, outside the Exchange.” Tr 2 130. Exhibit A-27 provides daily highs that include this additional NYMEX price information.

A comparison of Exhibit A-27 to Mr. Hollewa’s chart reveals that the NYMEX price paid by Consumers for its 9/30/08 purchase for November-March gas and its 11/18/08 purchase for April-October gas both exceeded the NYMEX high for those dates. See Exh A-28. The comparison also reveals that the remaining 15 purchase prices trend more closely to the daily high than they do to the daily close presented in Mr. Hollewa’s chart. See Exh A-28.

All of these purchases were presented in Exhibit A-23 of the Plan case, Case No U-15704, and approved by Commission order on March 2, 2010.

Pension and OPEB Reconciliation

In Case No U-15041-R, the Commission authorized Consumers to recover \$3,439,616, plus interest, of unrecovered pension and OPEB expenses. 2 Tr 41. Pursuant to Commission order, a one-month surcharge was collected in February 2010 to recover the expenses. 2 Tr 41. As of March 31, 2010, there remains an unrecovered balance of \$259,915⁵. 2 Tr 41.

Consumers requests authorization “to recover the [balance], with interest until the midpoint of the month of recovery, by including the unrecovered amount in a future Reconciliation.” 2 Tr 41.

Affiliated Companies

At 2 Tr 24-28, MCAAA's witness, Mr. Peloquin, presents testimony regarding “unregulated subsidiaries/affiliation of Consumers Energy and CMS Energy.” MCAAA established that CMS Energy's and Consumers' Boards of Directors are identical and that “every CMS Energy Executive is also a Consumers Energy Executive.” 2 Tr 26.

In his testimony, Mr. Peloquin raises questions regarding Consumers' relationship with CMS Energy Resource Management Company and makes some general recommendations encouraging the Commission to more closely examine this relationship in Plan and reconciliation cases. See 2 Tr 25-26.

⁵ For an explanation of how this figure was calculated, see 2 Tr 93-94.

POSITIONS OF THE PARTIES

Introduction

Consumers calculates a net over-recovery of \$1.423 million for the GCR period; comprised of a \$53,465 under-recovery for the GCR period and accrued interest of \$1.477 million owed to customers. Consumer Init Br, p 1. Consumers proposes that this be refunded to customers using the roll-in method in its Tariff Rule C7.2. Consumers Init Br, p 1. Consumers argues that the “GCR costs incurred were reasonable and prudent, were in accordance with the GCR Plan approved by the Commission in Case No. U-15704, and should be reconciled with revenues as set forth in the Company’s filing.” Consumers Init Br, p 1.

With regard to the reconciliation of pension and OPEB costs, Consumers calculates that, as of March 31, 2010, there remains an unrecovered balance of \$259,915. Consumers Init Br, p 2. Consumers requests Commission authorization to recover \$259,915, plus interest until the midpoint of the month of recovery, in a “future reconciliation”. Consumers Init Br, p 2.

The intervenors argue for disallowance of certain costs, as described below.

August and September Purchases

The Attorney General and MCAAA argue for a \$6.1 million cost disallowance for the four contested August and September purchases, while RRC argues for a \$1,613,000 disallowance.

Consumers argues that the challenged purchases were made to satisfy tiered fixed price purchase requirements of its Gas Purchasing Strategy Guidelines, found in exhibit A-3. Consumers Init Br, p 15. Consumers states that, as of August 21, 2008, it needed to fix the price on an additional 16 Bcf to meet its December 1st target of having 15-20% of the April-March GCR requirements under fixed price purchases. Consumers Init Br, p 15. Consumers adds that it began making tiered fixed price purchases on August 22, 2008, as part of its plan to purchase its remaining needs evenly over the August to November time period. Consumers Init Br, p 15.

The Attorney General argues that MCL 460.6h(6) requires Consumers “to minimize its GCR costs . . . to the extent reasonably possible” and that the Guidelines “do not establish a mandatory ceiling for purchasing fixed price gas supplies” and “do not establish a mandatory floor.” AG Init Br, p 1. He adds, at AG Init Br, p 1 (citations omitted), that:

[T]his amount should be disallowed because market conditions and price reflected in Exhibits AG-5, AG-6, and AG-7 indicate that at the time CECO made its purchasing decisions in August and September 2008, market price had declined significantly and because it was reasonably foreseeable that GCR costs would not be minimized by making fixed price purchases at that time for deliveries during the 2009-2010 GCR year.

RRC argues “it was unreasonable and imprudent” for Consumers to “fail to exercise discretion in its administration of those guidelines to mitigate costs for the benefit of the GCR customers given the price opportunities that existed in the market at that time.” RRC Init Br, p 5:

MCAAA argues, at MCAAA Rep Br, p 2-3, that:

[T]he guidelines . . . are somewhat general and constitute in essence projected proposals for action, filed before the Plan year even commences. The guidelines should not be viewed as a shield to curtail the kind of retrospective review that Act 304 requires in the reconciliation case - which necessarily must be based upon a review of the Company's purchase decisions and the administration of the Plan in the context of actual circumstances. The reconciliation phase of the case must necessarily review and scrutinize CECO's purchase decisions on a retrospective basis. Otherwise the important purposes of the reconciliation case would be rendered nugatory.⁶

Consumers continues by arguing that the basis for both Mr. Miller's and Mr. Hollewa's recommended disallowance is that Consumers should have "waited" with the hope prices would decline". Consumers Init Br, p 16. Consumers argues that this is the same as suggesting Consumers "should have attempted to 'beat-the-market' by delaying purchases with the hope prices would be lower". Consumers Init Br, p 17. Consumers believes this strategy is "inconsistent with the Commission's conclusions" in its December 18, 2007 Order in Case No U-14401-R, in which, the Commission indicated that MichCon "should *not* have attempted a 'beat-the-market' approach." Consumers Init Br, p 17.

RRC considers Consumers' "beat-the-market" argument to be "a straw man and nothing further from the truth" and argues that Consumers' fixed price purchases "should have some semblance to market prices." RRC Init Br, p 4-5.

MCAAA responds to Consumers' "beat-the-market" argument by stating, at MCAAA Rep Br, p 4-5, that:

⁶ As support of this argument, MCAAA cites Michigan Consolidated Gas Company, Attorney General and MCAAA, v MPSC, unpublished opinion in Docket No. 282741, dated February 2, 2010.

CECo's argument essentially boils down to the claim that all it must show in a reconciliation case is that its purchases were within the Gas Purchasing Guidelines formulated before the Plan year started. This assertion, if adopted, would represent a mighty low and undisciplined standard for determining what decisions and actions were reasonable and prudent in administering and implementing the Plan in actual circumstances. . . . CECo's theory should be rejected because it would serve to endorse a mindless, overly formalistic, and nondiscretionary approach to the administration of the Plan, and would defeat the standards and purposes of the Act 304 process. CECo must be held to have some discretion and judgment, and continuing duty, to adjust the Plan in its actual administration of the Plan, based upon actual circumstances as the Plan year unfolds.

The Attorney General argues that the Commission's holding in Case No. U-14401-R "does not represent a conclusion that there cannot be a reasonable and prudent justification for delaying purchases." AG Rep Br, p 7. The Attorney General argues that it is an "undisputed fact" that Consumers could have met its fixed price purchasing targets "by delaying FP purchases until later when in fact they would have cost less." AG Rep Br, p 7. The Attorney General adds, at AG Rep Br, p 7, that:

The evidence in Exhibits AG-5, AG-6, and AG-7 shows a significant July and August decline in market prices, which made it reasonably foreseeable for CECo that immediate August and September purchases would probably be more expensive than waiting. Thus, based upon the whole record CECo did not reasonably and prudently make those purchases even though there are no guarantees about the future.

Finally, Consumers adds, at Consumers Init Br, p 19-21:

[T]he challenged purchases were identified in the GCR Plan Case U-15704 and could have been considered in the . . . GCR plan and cost review. The challenged purchases were made in August and September 2008 for delivery during the April 2009 through March 2010 Plan year. The GCR Plan case U-15704 was filed in December 2008. Each of the challenged purchases is identified in Case No. U-15704 Exhibit A-23, page 1. 2 TR 119. . .

. [T]he Legislature in Act 304 of 1982 established a two-step process for implementation of a GCR clause and review of the cost of the Statutory provisions in MCL 460.6h(12) limit issues considered in a reconciliation hearing to those that “could not have been considered adequately at a previously conducted gas supply and cost review.” Issues related to these four purchases are not issues that “could not have been considered adequately” in the plan case proceeding.

* * *

Not only were these four purchases consistent with the GCR Plan, they were specifically identified in the GCR Plan Case U-15704. The disallowances proposed by Mr. Miller and Mr. Hollewa must be rejected.

RRC responds by arguing that, pursuant to the Commission’s holding in Case No U-16146, “Consumers continues to bear the burden of justifying the purchases in question in this GCR reconciliation.” RRC Init Br, p 6.

The Attorney General argues, at AG Rep Br, p 5-6, that:

The accuracy of the costs from those contracts were not disputable in CECo's 2009-2010 GCR plan; furthermore, CECo did not go forward and file evidence why natural gas market prices justified the August and September purchases. So the question remains whether or not the August and September purchases were reasonable and prudent at the time CECo made them. The fact that CECo identified actual contract prices in its 2009-2010 GCR plan standing alone does not justify recovery in this reconciliation.

Great Lakes Basis Disallowance

Based on the analysis and testimony of its witness, Mr. Hollewa, RRC argues for a disallowance of \$149,800⁷ related to the basis of Consumers’ 12/17/08 purchase of 2,140,000 Dth of gas from Supplier B for the April-October period. RRC Init Br, p 9. RRC argues that the basis adjustment of (\$0.0900) for the 12/17/08 purchase was too small, when compared to the basis of four purchases made on 11/07/08, 11/12/08, 11/18/08, and 11/20/08, that averaged

⁷ $(\$0.1600 - \$0.0600) 2,140,000 = \$149,800$. RRC Init Br, p 9.

(\$0.1800), and two purchases on 11/25/08, that averaged (\$0.1600).
RRC Init Br, p 9.

Consumers argues that Mr. Hollewa's "proposed disallowance is based on his view that the Company did not properly consider the basis portion of the natural gas". Consumers Init Br, p 21. However, Consumers argues, Mr. Hollewa's conclusions are based on incorrect information. Consumers Init Br, p 23. Consumers states that the delivery point for the 12/17/08 purchase had been incorrectly labeled in Exhibit A-5 and adds, at Consumers Init Br, p 23 (citations omitted):

The 12/17/08 purchase was actually an Emerson delivery, not a GL delivery. In his rebuttal, Mr. Howard explained the incorrect labeling contained within Exhibit A-5 and provided copies (Exhibits A-23 and A-24) of the actual Consumers Energy Natural Gas Deal transactions and Purchase Confirmations to verify the actual delivery points.

Trunkline Basis Disallowances

RRC is recommending a \$313,400 disallowance related to four purchases; two made on 9/29/08 from Supplier J and two made on 10/06/08 from Supplier H. RRC argues that, for these purchases, the average basis was (\$0.0275) for the Apr-Oct period and (\$0.0200) for the Nov-Mar period. RRC Init Br p 9. RRC contrasts this with the average basis for all other October Trunkline purchases which was (\$0.0725) for eight Apr-Oct purchases and (\$0.0612) for four Nov-Mar purchases. RRC Init Br p 9. Based on these averages, RRC argues "that a fair and accurate representation of the proper Basis would be (\$0.0450) greater in

Apr-Oct [and] (\$0.0400) in Nov-Mar” and recommends its \$313,400⁸ disallowance. RRC Init Br, p 10.

RRC states that the “difference between Consumers and the RRC on this issue goes to a fundamental disagreement about how the Company administers its FPP guidelines.” RRC Init Br, p10. RRC explains, at RRC Init Br, p 10, that:

The Company’s failure to bargain hard on the Basis component of the purchase price results in mediocre results on the total price paid for supply. RRC witness Hollewa characterized this as the Company’s “unreasonable and imprudent rush to make purchases without properly considering the correct Basis adjustment.”

* * *

This is an example of the Company failing to seek ways to minimize the cost of gas to its GCR customers when the opportunity presents itself.

In response Consumers argues, at Consumers Rep Br, p 15, that:

The RRC’s argument that the Company should “bargain hard on the Basis component of the purchase price” fails to recognize that (i) Consumers Energy’s goal is to purchase gas at the lowest total market price available at the time of the purchase, (ii) the reasonableness and prudence of the total price should be determined in comparison to the total price of other fixed price offers received, (iii) the Company solicits multiple competitive offers when making a fixed price purchase, and (iv) the total price for the challenged purchases was equal to or lower than similar purchases from another supplier on the same pipeline on the same day, even though the indicated Basis component amounts were different.

The NYMEX “High” Disallowances

In its initial brief, RRC notes that Consumers “provided data on Exhibit A-28 that shows the NYMEX ‘High’ based on a data set from FutureSource” and that the “data on Exhibit A-28 shows that the prices at which the Company made these purchases does not exceed the NYMEX “High” shown

⁸ $(4,280,000 \times \$0.0450) + (3,020,000 \times \$0.0400) = \$313,400$

on the Exhibit.” RRC Init Br, p 11. However, at RRC Init Br, p 11-12, RRC then argues:

[T]here is no indication of when these “Highs” occurred and there is no way to tell from this data whether the “Highs” happened in the hours of the day in which Consumers was making these purchases. On this issue the Company has failed to meet its burden of proving that the prices at which it purchased this gas were reasonable. In 5½ hours of the 9-hour business day in which the Company was making purchases, the data from *Gas Daily* suggests that the prices the Company paid for these supplies exceeded the NYMEX “High” for those days. . . . There is no way of knowing whether the data in Exhibit A-28 is applicable to the business hours in which Consumers made these purchases. For these reasons, the disallowance . . . should be adopted.

Consumers argues that a comparison of the actual NYMEX Highs, found in exhibit A-28, to the challenged purchase prices, reveals that, “rather than exceeding the NYMEX Highs by \$1,994,812, the purchases were \$2,746,260 less than the NYMEX Highs”. Consumers Rep Br, p 16-17. Thus, Consumers argues that no disallowance is appropriate. Consumers Rep Br, p 17.

OPEB

“Consumers Energy requests that the . . . Commission authorize Consumers Energy to recover the under-recovered \$259,915, with interest until the midpoint of the month of recovery, by including the under-recovered amount in a future reconciliation.” Consumers Init Br, p 34. No other party took a position on this issue.

Regulatory Participation⁹

MCAAA argues that Consumers' "presentation consists primarily of scant summary results of the GCR costs, with little in-depth discussion of the actions CECo undertook to minimize costs during the year." MCAAA Init Br, p 4. MCAAA adds that Consumers "includes no information at all concerning any participation undertaken at the federal or Canadian regulatory level (such as FERC) to actively advocate for cost reductions from interested suppliers." MCAAA Init Br, p 4.

Consumers responds by arguing that actions taken to reduce regulatory costs should be and were addressed in the Plan case; Case No. U-15704. Consumers Init Br, p 28. Consumers states that, "[i]f MCAAA wishes to raise issues related to regulatory actions taken to minimize the cost of gas, it can and should do so in GCR Plan case proceedings, as provided for in Act 304." Consumers Init Br, p 28.

Affiliated Companies

At MCAAA Init Br, p 4 MCAAA argues that:

[T]he Commission should adopt a regulatory policy and a process to ensure that CECo is protected from all risks attributable to its parent holding company and its unregulated affiliates, and to ensure that CECo's costs and regulated rates are just and reasonable. MCAAA recognizes that this necessary shift toward greater regulatory scrutiny is not accomplished overnight. However, this journey toward . . . better protecting CECo's ratepayers (and CECo also) is overdue and should commence now.

⁹ Because there was insufficient evidence to make any meaningful determinations, no findings of facts were made regarding this issue.

Consumers considers MCAAA's request to be based on "unsubstantiated speculation." Consumers Rep Br, p 18. Consumers adds that "there were no GCR-related purchases, sales, bartering, payments, or dividends between Consumers Energy and any affiliated entity during the 2009-2010 year." Consumers Init Br, p 28. Further, Consumers argues that, pursuant to MCL 460.6h, the request is outside the scope of a reconciliation hearing.

DISCUSSION

MCL 460.6h states, in part:

(5) If a utility files a gas cost recovery plan and a 5-year forecast . . . , the commission shall conduct a . . . gas supply and cost review, for the purpose of evaluating the reasonableness and prudence of the plan, and establishing the gas cost recovery factors to implement a gas cost recovery clause incorporated in the rates or rate schedule of the gas utility.

6) In its final order in a gas supply and cost review, the commission shall evaluate the reasonableness and prudence of the decisions underlying the gas cost recovery plan . . . and shall approve, disapprove, or amend the gas cost recovery plan accordingly.

(12) Not less than once a year, and not later than 3 months after the end of the 12-month period covered by a gas utility's gas cost recovery plan, the commission shall commence a proceeding, to be known as a gas cost reconciliation . . . At the gas cost reconciliation the commission shall reconcile the revenues recorded pursuant to the gas cost recovery factor and the allowance for cost of gas included in the base rates established in the latest commission order for the gas utility with the amounts actually expensed and included in the cost of gas sold by the gas utility. The commission shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.

(13) In its order in a gas cost reconciliation, the commission shall require a gas utility to refund to customers or credit to customers' bills any net amount determined to have been recovered over the period covered in excess of the amounts determined to

have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. Such refunds or credits shall be apportioned among the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order refunds or credits in proportion to the excess amounts actually collected from each such customer during the period covered.

(14) In its order in a gas cost reconciliation, the commission shall authorize a gas utility to recover from customers any net amount by which the amount determined to have been recovered over the period covered was less than the amount determined to have been actually expensed by the utility for gas sold, and to have been incurred through reasonable and prudent actions not precluded by the commission order in the gas supply and cost review. For excess costs incurred through actions contrary to the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates by clear and convincing evidence that the excess expenses were beyond the ability of the utility to control through reasonable and prudent actions. For excess costs incurred through actions consistent with commission's gas supply and cost review order, the commission shall authorize a utility to recover costs incurred for gas sold in the 12-month period in excess of the amount recovered over the period only if the utility demonstrates that the excess expenses were reasonable and prudent. Such amounts in excess of the amounts actually recovered by the utility for gas sold shall be apportioned among and charged to the customers of the utility utilizing procedures that the commission determines to be reasonable. The commission may adopt different procedures with respect to customers served under the various rate schedules of the utility and may, in appropriate circumstances, order charges to be made in proportion to the amounts which would have been paid by such customers if the amounts in excess of the amounts actually recovered by the utility for gas sold had been included in the gas cost recovery factors with respect to such customers during the period covered. Charges for such excess amounts shall be spread over a period that the commission determines to be appropriate.

(15) If the commission orders refunds or credits pursuant to subsection (13), or additional charges to customers pursuant to subsection (14), in its final order in a gas cost reconciliation, the refunds, credits, or additional charges shall include interest and

shall be apportioned among the utility's customer classes in proportion to their respective usage during the reconciliation period. In determining the interest included in a refund, credit, or additional charge pursuant to this subsection, the commission shall consider, to the extent material and practicable, the time at which the excess recoveries or insufficient recoveries, or both, occurred. The commission shall determine a rate of interest for excess recoveries, refunds, and credits equal to the greater of the average short-term borrowing rate available to the gas utility during the appropriate period, or the authorized rate of return on the common stock of the gas utility during that same period. The commission shall determine a rate of interest for insufficient recoveries and additional charges equal to the average short-term borrowing rate available to the gas utility during the appropriate period.

As argued by Consumers, the statutory provisions, above, create a two-step GCR process. In the first, the Plan case, the utility presents its Plan and five-year forecast. Pursuant to MCL 460.6h(5) and 460.6h(6), the Commission must then evaluate “the reasonableness and prudence of the plan” and the “decisions underlying” it. After doing so, the Commission “shall approve, disapprove, or amend the gas cost recovery plan accordingly.” MCL 460.6h(6). In the second step, pursuant to MCL 460.6h(12), the Commission must reconcile the actual revenues with the actual expenses. As part of the reconciliation process, the Commission “shall consider any issue regarding the reasonableness and prudence of expenses for which customers were charged if the issue could not have been considered adequately at a previously conducted gas supply and cost review.” MCL 460.6h(12). In its reconciliation order, for “excess costs incurred through actions consistent” with the Commission’s order from the Plan case, the Commission shall allow recovery of the gas “costs incurred . . . in excess of the amount recovered . . . if the utility demonstrates that the excess expenses were reasonable and prudent.” MCL 460.6h(14).

In this contested case, the intervenors challenge the reasonableness and prudence of a number of gas purchases, all of which were previously found reasonable and prudent by the Commission in the Plan case; Case No U-15704. Consumers argues that the intervenors' objections should not be heard because they could have been made at the Plan case. There are no suggestions of any sort of misrepresentation of evidence or facts in the Plan case. The parties' positions raise issues regarding the nature of the intervenors' objections, under MCL 460.6h(12); the relevance, if any, of the Commission's prior holding that the costs were reasonable and prudent, and; the mandates of MCL 460.6h(14).

Pursuant to MCL 460.6h(12), the Commission is required to consider any issue that could not have been considered adequately in the Plan case. As previously noted, at the time of the Plan case, the challenged purchases had already been made by Consumers. Consumers presented all of them, as part of its GCR Plan, in exhibit A-23 of Case No U-15704. They were subsequently approved by the Commission in its March 2, 2010, Order in that case. In addition, in this reconciliation case, all of the unchallenged purchases that the intervenors rely upon as evidence to question the reasonableness of the challenged purchases were, likewise, previously presented in exhibit A-23 of Case No U-15704 and approved by the Commission. Thus, in the Plan case, all of the purchases that the intervenors, now, either challenge or present as evidence, were known and presented as part of Consumers' GCR Plan. Additionally, as part of their challenges, intervenors presented evidence regarding the market conditions that existed at the time that the challenged

purchases were made. All of this market information was known and could have been presented at the time of the Plan case. Furthermore, the issue of basis, raised here, was previously addressed in the Plan case when RRC's counsel, Mr. Shaltz, conducted cross-examination addressing the issue with Consumers' witness, Mr. Howard. See Case No U-15704, 2 Tr 232-34, 263. Additionally, the intervenors argue, generally, that Consumers failed to use appropriate discretion, under the Purchasing Guidelines, when making certain of these purchases. The issue of the appropriate use of discretion under the Purchasing Guidelines was certainly an issue that could have been raised and adequately considered in Plan case. Finally, all of the information regarding the NYMEX highs issue was available to the parties and could have been fully considered during the Plan case. In short, intervenors have raised no issue, in this case, that could not have been adequately considered in the Plan Case. Therefore, in conformity with the two-step process mandated by the legislature, the Commission is not required to consider these issues in this reconciliation case.

The question remains as to whether the Commission should consider these issues. The answer is no. As already noted, all of the challenged costs were known and presented during the Plan case. Upon their approval by the Commission, they became a part of the Plan and, as with the remainder of the Plan, as amended, were found reasonable and prudent. As a result, these purchases are not properly viewed as costs that flow from the Plan, rather, they are the Plan. They should be considered no different than other aspects of the Plan, such as the Purchasing Guidelines that, while they may disagree with

them, the intervenors do not challenge. To preserve the two-step GCR process that the legislature mandated, some level of finality must be given the Commissions' opinion when it approves a Plan. To do otherwise would open all decisions, made during the Plan case, to re-evaluation in the reconciliation phase and would fundamentally run afoul of the statutory provisions mandating the two-step GCR process. Thus, under the circumstances of this case, the issues raised by the intervenors, all of which could have been fully considered in the Plan case, may not be used to mount a collateral attack upon the Commission's decision that the challenged purchases were reasonable and prudent.

Finally, it must be determined what effect these findings have on the provision of MCL 460.6h(14) that reads, in part, "[f]or excess costs incurred through actions consistent with the commission's gas supply and cost review order, the commission shall authorize a utility to recover costs . . . in excess of the amount recovered . . . only if the utility demonstrates that the excess expenses were reasonable and prudent."¹⁰ The intervenors seem to suggest that this requires a full re-determination as to the reasonableness and prudence of the challenged purchases. However, a matter decided or passed upon by the Commission is received as evidence of truth, i.e. *res judicata pro veritate accipitur*. Thus, under the circumstances of this case, the Commission's prior holding that the challenged costs were reasonable and prudent supports a finding that, in this reconciliation case, the excess expenses were reasonable and prudent.

¹⁰ Because of the manner in which interest calculations are made, Consumers reports a refund due its customers. However, Consumers actually recorded an under-collected for the GCR year.

In sum, because all of the challenged purchases were previously approved by the Commission and no issue regarding them has been presented that could not have been adequately considered in the Plan case, the challenges fail. Under the circumstances of this case, to find otherwise, would run afoul of the clear language and intent of the relevant statutory provisions. As stated above, the statutory provisions create a two-step process. The first step requires evaluation of the Plan and a determination as to its reasonableness and prudence. The second requires reconciliation of costs and expenses. To allow unfettered review, in the reconciliation phase, of costs that had been previously approved in the Plan phase, would render nugatory vital aspects of the Plan phase and the statutory provisions that mandate them. Such an outcome cannot stand. Therefore, the intervenors' challenges fail.

MCAAA's Regulatory and Affiliate Recommendations

MCAAA has made comments and recommendations regarding Consumers participation in regulatory matters and with regard to its affiliates. Because of the statutorily limited nature of this proceeding, these matters are outside the proper scope of this reconciliation case and are not adopted.

Pension and OPEB Reconciliation

"Consumers Energy requests that the . . . Commission authorize Consumers Energy to recover the under-recovered \$259,915, with interest until the midpoint of the month of recovery, by including the under-recovered amount in a future reconciliation." Consumers Init Br, p 34.

Consumers request amounts to an open-ended request to recover \$259,000, plus continually accumulating interest, at some unspecified time in the future. Because of the uncertainty of this proposal, the request is denied.

CONCLUSION

From the record, as a whole, it appears that Consumers' actual expenses for gas sold during the GCR year ending March 31, 2010, were incurred through reasonable and prudent actions previously approved by the Commission in its March 2, 2010, Order in Case No U-15704 and, for the reasons stated above, Consumers' Application is approved.

Consumers' cumulative over-recovered balance, including interest, for the Plan year ending March 31, 2010, was \$1,423,236. Consumers shall roll-in the over-recovery to its current GCR costs, pursuant to Tariff Rule C.7.2.

Consumers pension and OPEB proposal is not approved.

Any evidence and arguments not specifically addressed in this Proposal for Decision were deemed irrelevant to the findings and conclusions of this matter.

MICHIGAN ADMINISTRATIVE HEARING
SYSTEM
For the Michigan Public Service Commission

Mark D. Eyster
Administrative Law Judge

ISSUED AND SERVED: November 23, 2011
drr